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By: _____

Veronica Weinstein



PATENT

Customer No. 22,852

Attorney Docket No. 07579.0001-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Reissue Application of:

Graham Edmund KELLY

Application No.: 09/602,191

U.S. Patent No.: 5,830,887

Filing Date: June 22, 2000

For: HEALTH SUPPLEMENTS
CONTAINING PHYTO-
OESTROGENS, ANALOGUES
OR METABOLITES THEREOF

Group Art Unit: 1623

Examiner: Patrick T. LEWIS

Confirmation No. 8264

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Commissioner for Patents

P.O. Box 1450

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Sir:

FOURTH NOTICE REGARDING RELATED LITIGATION

Applicant hereby submits this Fourth Notice Regarding Related Litigation to the U.S. Patent and Trademark Office to inform the Office of the current status of the Solae I and Solae II litigations. The present application, Serial No. 09/602,191, is a reissue application of U.S. Application Serial No. 08/338,567, originally filed as PCT/AU93/00230 on May 19, 1993, which

entered the national stage on January 12, 1995, and which issued as U.S. Patent No. 5,830,887 on November 3, 1998. One of the patents in suit, U.S. Patent No. 6,562,380 ("the '380 patent") issued from U.S. Application No. 08/910,837 on May 13, 2003, and was originally filed on August 13, 1997, as a continuation of U.S. Application No. 08/338,567, which entered the national stage on January 12, 1995, and issued as U.S. Patent No. 5,830,887. A second patent in suit, U.S. Patent No. 6,642,212 B1 ("the '212 patent") issued from U.S. Application No. 09/421,069 on November 4, 2003, and was originally filed on October 19, 1999, as a continuation of U.S. Application No. 08/910,837, filed August 13, 1997, now U.S. Patent No. 6,562,380 B1. Application Nos. 08/338,567, 08/910,837 and 09/412,069 are assigned to Novogen Research Pty. Ltd.

Applicant previously submitted three Notices Regarding Related Litigation, on September 19, 2003, on December 23, 2003, and on April 15, 2004, informing the Office that on June 3, 2003, Solae, L.L.C. ("Solae") filed a Complaint alleging that Archer Daniels Midland Company ("ADM") and Amerifit Nutrition, Inc. ("Amerifit") infringe at least one claim of U.S. Patent No. 6,562,380 ("the '380 patent") and U.S. Patent No. 5,990,291 ("the '291 patent"). The case, Civil Case No. 4:03-CV-00732-HEA, was filed in the U.S. District Court for the Eastern District of Missouri ("Solae I"). The '380 patent is described above. The '291 patent is a divisional of U.S. Application No. 09/086,658 filed on May 29, 1998, now U.S. Patent No. 5,919,921, which is a continuation-in-part of Patent Application No. 08/661,845, filed on Jun. 11, 1996, now U.S. Patent No. 5,821,361.

Applicant also informed the Office that on November 4, 2003, Solae filed a separate Complaint alleging that ADM and Amerifit infringe at least one claim of the U.S. Patent No. 6,642,212 B1 ("the '212 patent"). The case, Civil Case No. 4:03-CV-01595 HEA, was filed in

U.S. District Court for the Eastern District of Missouri ("Solae II"). The '212 patent is described above in the first paragraph on page 2. In this Complaint Solae also alleged infringement of U.S. Patent No. 6,664,382 B1 ("the '382 patent"). On January 29, 2004, Solae filed a Second Supplemental Complaint adding a claim of infringement of U.S. Patent No. 6,680,381 ("the '381 patent") to the earlier allegations of infringement of the '212 and '382 patents.

We note the following events in the Solae litigation, which were omitted from the previous Notices or occurred since the events summarized in our previous Notice Regarding Related Litigation of April 15, 2004.

On December 29, 2003, the plaintiff in Solae II filed its First Supplemental Complaint adding allegations of infringement of U.S. Patent No. 6,664,382 B1 ("the '382 patent") to its previous claims.

On April 21, 2004, the plaintiff in Solae I filed Plaintiff's Replies to Answers and Counterclaims of Defendants ADM and Amerifit. In these Replies Solae denied defendants' allegations of non-infringement and invalidity of the '380 and '291 patents.

On the same date, the plaintiff in Solae II, filed Plaintiff's Replies to Answers and Counterclaims of Defendants ADM and Amerifit. In these Replies Solae denied defendants' allegations of non-infringement and invalidity of '212, '382, '381 patents.

On April 26, 2004, Solae filed its Third Supplemental Complaint adding an allegation of infringement of U.S. Patent No. 6,706,292 ("the '292 patent") to the earlier allegations of infringement of the '212, the '382, and the '381 patents.

On April 28, 2004, the Court ordered consolidation of Solae I and Solae II cases for all purposes. All further pleadings related to allegations in Solae II will be filed in Civil Case No. 4:03-CV-00732-HEA (Solae I).

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On May 11, 2004, Defendants ADM and Amerifit filed Answers and Counter Claims to Plaintiff's Third Supplemental Complaint. In these answers ADM and Amerifit deny all allegations presented in Third Supplemental Complaint and present counter claims of invalidity and non-infringement of '212, '382, '381, and '292 patents.

On June 1, 2004, Solae filed Plaintiff's Replies to Answers and Counterclaims of Defendants ADM and Amerifit. In these Replies, Solae denied defendants' allegations of non-infringement and invalidity of '212, '382, '381, and '292 patents.

The parties have completed an Alternative Dispute Resolution program and are presently in settlement negotiations.

Further to this Notice, Applicant attaches: Plaintiff Solae's First Supplemental Complaint (filed December 29, 2003 in Solae II), Plaintiff's Reply to Answer and Counterclaims of Defendant Amerifit (filed April 21, 2004 in Solae I); Plaintiff's Reply to Answer and Counterclaims of Defendant ADM (filed April 21, 2004 in Solae I); Plaintiff's Reply to Answer and Counterclaims of Defendant Amerifit (filed April 21, 2004 in Solae II); Plaintiff's Reply to Answer and Counterclaims of Defendant ADM (filed April 21, 2004 in Solae II); Third Supplemental Complaint (filed April 26, 2004); Defendant ADM's Answer and Counter Claims to Plaintiff's Third Supplemental Complaint (filed May 11, 2004); Defendant Amerifit's Answer and Counter Claims to Plaintiff's Third Supplemental Complaint (filed May 11, 2004); Plaintiff's Reply to Answer and Counterclaims of Defendant Amerifit (filed June 1, 2004); Plaintiff's Reply to Answer and Counterclaims of Defendant ADM (filed June 1, 2004); and docket reports for Solae I and Solae II cases, current as of January 20, 2005.

REMARKS

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,
FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: January 21, 2005

By: 

Deborah J. Acker
Reg. No. 48,916

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